

1 **The Knight Law Group**  
2 Noel Knight (SBN 223821)  
3 800 J St., Ste. #441,  
4 Sacramento, CA 95814  
5 Telephone: (510) 435 9210  
6 Fax: (510) 281 6889  
7 lawknight@theknightlawgroup.com

8 Attorneys for Debtor...COMPASS POINTE OFF CAMPUS PARTNERSHIP B, LLC

9 **UNITED STATES BANKRUPTCY COURT**  
10 **EASTERN DISTRICT OF CALIFORNIA - FRESNO DIVISION**

11 In Re:

12 COMPASS POINTE OFF CAMPUS  
13 PARTNERSHIP B, LLC

CASE NO. 2022-10778

SUPPLEMENT TO DEBTOR'S AMENDED  
MOTION TO APPROVE DEBTOR-IN-  
POSSESSION FUNDING

DCN: NCK - 8

Dept.: A, Crtroom #11, 2500 Tulare St., Fresno

Date: September 28, 2022 @ 9:30 a.m.

Hon. Jennifer E. Niemann; cc: United States Trustee

14 **SUPPLEMENT DEBTOR'S AMENDED**  
15 **MOTION TO APPROVE D.I.P FINANCING**

16 Compass Pointe Off Compass Partnership B, LLC, the Debtor and Debtor-In-Possession  
17 in the above-captioned matter (hereinafter "**Debtor**" or "**Compass**") hereby supplements its  
18 Amended Motion to Approve D.I.P. Financing (the "**Motion**") to address certain matters raised  
19 by this Court at the initial hearing held on September 14, 2022, and respectfully represents as  
20 follows:  
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**INFORMATION REQUESTED BY LOCAL BANKRUPTCY RULE 4001-1(c)(3)**

1. Under Local Bankruptcy Rule 4001-1(c)(3), the motion must recite whether the proposed post-petition financing agreement contains certain specific provisions, enumerated as “A)” through “L)”. The Debtor-in-Possession Construction Loan Agreement (the “**DIP Loan Agreement**”), a copy of which is attached to the Declaration of Christopher Wren in Support of the Debtor’s Amended Motion to Approve Debtor in Possession Financing (the “**Wren Decl.**”), filed concurrently herewith, as Exhibit 2, contains the following enumerated provisions (listed by subparagraph of the Local Bankruptcy Rule, with the rule in italics):

D) *Waiver of 11 U.S.C. § 506(c), unless the waiver is effective only during the period in which the debtor is authorized to use cash collateral or borrow funds.*

Under Section 8.1(xxxvii) of the DIP Loan Agreement, it is an event of default if there is any surcharge under Bankruptcy Code section 506(c) or otherwise, of any Collateral<sup>1</sup> in any amount, or subjecting the Lender or the Collateral to the equitable principal of marshaling. The proposed order, in paragraph 19, contains a provision which any charge against the Lender or the Collateral under Section 506(c) of the Bankruptcy Code without the Lender’s prior written consent.

E) *Provisions that operate to divest the debtor-in-possession of any discretion in the formulation of a plan or administration of the estate or limit access to the court to seek any relief under other applicable provision of law.* Section 8.1(xliii) of the DIP Loan Agreement makes it an event of default if any chapter 11 plan is confirmed that does not provide for repayment in full in cash on the effective date of such plan of all outstanding Obligations. Section 8.1(xliv) and (xlv) of the DIP Loan Agreement makes it an event of default if the case is converted to Chapter 7 of the Bankruptcy Code or dismissed/closed, respectively.

<sup>1</sup> Any capitalized term not defined herein shall have the definition set forth in the DIP Loan Agreement.

1 In addition, paragraph 18 of the proposed order contains provisions  
2 waiving the Debtor's right seek conversion of the case, obtain other financing  
3 without the Lender's consent, to challenge payments authorized by the order  
4 pursuant to Bankruptcy Code section 506(b) or to propose a plan that does not  
5 provide for payment in full of the amounts owed under the DIP Loan Agreement.  
6 Paragraph 20 of the Proposed Order limits the ability of the Debtor to seek to sell  
7 the Collateral (other than to Aspen Real Estate Financial LLC ("**Aspen**") pursuant  
8 to that Agreement for Purchase and Sale of Real Property and Joint Escrow  
9 Instructions, entered into between Aspen and the Debtor (the "**Aspen Purchase**  
10 **Agreement**").

11  
12 H) *Automatic relief from the automatic stay upon default, conversion to chapter 7,*  
13 *or appointment of a trustee.* Paragraph 17 of the proposed order grants relief from  
14 stay to the Lender to, among other things, implement the DIP Loan, perfect its  
15 liens, and exercise its remedies.

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17 K) *Waivers, effective on default or expiration, of the debtor's right to move for a*  
18 *court order pursuant to 11 U.S.C. §363(c)(2)(B) authorizing the use of cash*  
19 *collateral in the absence of the secured party's consent.* Paragraph 18 of the  
20 proposed order waives the debtor's right to use cash collateral of the Lender under  
21 section 363 of the Bankruptcy Code.

## 22 FUNDING OF THE CONSTRUCTION

23 2. As stated in the DIP Loan Agreement, part of the funds loaned to the Debtor shall  
24 be used to pay off the claim of Dakota Note, LLC ("**Dakota**"), the Debtor's pre-petition  
25 mortgagee, in the full amount of its allowed claim. The remainder of the funds shall be used to  
26 fund construction in accordance with certain milestones contained in the DIP Loan Agreement.

1           3. Attached to the Wren Decl. as Exhibit 3 is a table containing the milestones in  
2 connection with the construction project (the "**Milestone Table**"), which will also be included as  
3 exhibit G to the DIP Loan Agreement.

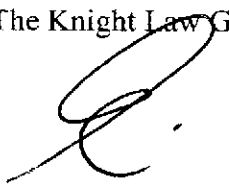
4           4. The Milestone Table lists the dates by which various construction tasks are to be  
5 completed. A copy of the budget (the "**Budget**") governing the construction costs is attached to  
6 the Wren Decl. as Exhibit 4. When read together, the Milestone Table and the Budget make clear  
7 that the funding under the DIP Loan will be sufficient to fund fully the construction through  
8 completion of Phase I prior to the purchase of Phase I by Aspen, which, under the Aspen  
9 Purchase Agreement, has agreed to purchase a completed Phase I for \$21,000,000 on June 30,  
10 2023 (subject to certain modifications as provided therein).

11           5. After satisfying the allowed claim of Dakota, the remaining balance of the DIP  
12 Loan will be approximately \$18,375,000. The Budget reflects that completion of Phase I will  
13 cost \$16,762,850.00, which will be fully funded by the DIP Loan. The Budget also reflects that  
14 Phase II will cost \$5,799,614.00 to complete. This brings the total development cost for  
15 completing the Project to \$22,542,307.23. With the remaining funds under the DIP Loan and the  
16 funds from Aspen to purchase Phase I, there are more than enough funds to complete construction  
17 of Phase II.

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19           WHEREFORE, given the foregoing, the Debtor submits that grounds exist to grant the  
20 relief hereby requested under Bankruptcy Rules 4001, 6003, and 6004.

21 Executed at Sacramento, California on September 21, 2022.

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23           The Knight Law Group,

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26 \_\_\_\_\_  
27 Noel Knight, Esq.  
28 The Knight Law Group

Attorneys for Debtor

1 Approved by:

2 s/s David C. Sowels

3 DocuSigned by:

4 By David Sowels

Manager David Sowels on behalf of the Debtor

5 DATED: September 21, 2022

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**EXHIBIT PACKAGE AS ATTACHED**

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